

**BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES**

First Named Inventor	:	Wolfgang ORGELDINGER
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Examiner	:	Stephen J. Castellano
Title	:	TRANSPORT CONTAINER SYSTEM FOR GOODS, ESPECIALLY FOR FRUIT AND VEGETABLES
Attorney Docket No.	:	SCHO0590

February 4, 2011

MAIL STOP: APPEAL BRIEF - PATENTS

Honorable Commissioner of Patents & Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Appellant's Appeal Brief follows.

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REAL PARTY IN INTEREST

The real party in interest is the assignee of the patent application, IFCO SYSTEMS GMBH, a German corporation having an address at ZUGSPITZSTRASSE 7, 82049 PULLACH, GERMANY. IFCO SYSTEMS GMBH' interest in the application is the subject of a recorded assignment which appears at Reel/Frame: 017622/0090.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

The status of the claims is as follows:

Claims 12-14, 16, and 17 are rejected. Claims 18-23 are withdrawn from consideration.

STATUS OF AMENDMENTS

Appellant's reply filed April 21, 2010 as a Response to the Office Action dated January 21, 2010 was considered and entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention is concerned with dual-compression voice recognition for non-repudiation of contractual agreements as set forth in independent Claim 12 as follows:

12. Transport container system (Fig. 1a (10); ¶ [0024]), comprising:
- a non-foldable or foldable crate (Fig. 1a (20); ¶ [0024]),
 - the crate comprising a rectangular bottom (Fig. 1a (13); ¶ [0024]) and four rigid lateral wall (Fig. 1a (11, 11a, 12, 12a); ¶ [0024]) adjoining the bottom and defining a rectangular opening in a plane parallel to the bottom,
 - a unitary top (Fig. 1a (30); ¶ [0024]) for augmenting height of the lateral walls of the crate and thereby providing a transport container of a increased volumetric capacity,
 - the top being constituted of a natural material and comprising four rigid lateral walls (Fig. 5 (15, 15a, 16, 16a); ¶ [0031]) of sufficient strength to permit transport container stacking and defining a rectangular opening conforming to the rectangular opening of the crate, and
 - fasteners (Fig. 3a (32); ¶ [0027]) for attaching the top when unfolded, to the crate at the opening thereof so that the lateral walls of the top augment height of the lateral walls of the crate,
 - wherein the lateral walls of the crate are structured to define a lattice (Figs. 1a, 2, 5, 5a, and 5b (11, 11a, 12, 12a); ¶ [0026] and [0027]), and
 - wherein said fasteners are attached to the top and are releasably engageable with the lattice structured lateral walls of the crate.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds for rejection are to be reviewed on appeal:

1. Whether Claims 12 and 14, which are rejected under 35 U.S.C. §103(a), are unpatentable over Heymann *et al* ("Heymann") US 4527707 in view of Sluiter (2002/0033392).
2. Whether Claims 12-14, and 17, which are rejected under 35 U.S.C. §103(a), are unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392).
3. Whether Claims 12-14, and 17, which are rejected under 35 U.S.C. §103(a), are unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and Heymann.
4. Whether Claims 12, 14, and 16, which are rejected under 35 U.S.C. §103(a), are unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392).
5. Whether Claim 17, which is rejected under 35 U.S.C. §103(a), is unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and further in view of Sterett (US 5361906).

ARGUMENTS

REJECTIONS UNDER 35 USC 103(a)

The Final Office Action rejected Claims 12-14, 16, and 17, as follows:

(a) Claims 12 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Heymann *et al* ("Heymann") US 4527707 in view of Sluiter (2002/0033392.) (b) Claims 12-14, and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392.) (c) Claims 12-14, and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and Heymann. (d) Claims 12, 14, and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392.) (e) Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and further in view of Sterett (US 5361906.)

As discussed below, all the rejections of all pending claims are based on clear errors in fact. Thus, the Office should reverse the rejections.

The obviousness rejections fail to consider a claim recitation and improperly correlates a claim recitation.

The Examiner fails to properly consider an express claim recitation, a lattice. And, even if the Examiner properly considers the claim recitation of a lattice, which he does not, he improperly correlates a lattice with objects being formed by a single hole.

In Applicant's opinion, the argument is quite simple, namely that the Examiner is not correct in his characterization of what a "lattice" is. As is noted in the Advisory Action, Claim 12 states that "the lateral walls of the crate are structured to define a lattice." The term "lattice," in Applicant's opinion, has a well defined meaning, namely a framework or structure of cross strips of material, for example wood, metal, or a plastic material. Applying this well-known understanding of the term "lattice" clearly defines the structure of the sidewall of the inventive crate and the specification refers with regard to Fig. 3a to the lateral sidewalls as being formed of a lattice. Thus, when considering the knowledge a person of ordinary skill has and confronting such a person with the term "lattice," such person would recognize the meaning of this term and understand that a regular grid of crossing strips of material is provided by a lattice.

However, the Examiner argues that, in accordance with the specification and in Fig. 3a **a lattice is to be defined as being formed by a single hole** and that he had no choice other than to broadly interpret the term "lattice" to include a single hole.

In Applicant's opinion, the above is not at all a reasonable argument. Rather, it is readily apparent that none of the art suggests providing a crate within a top extension which is attached to the lower part of the crate which has the lattice-structured sidewalls without providing additional fastening means. Rather the lattice structure itself is used which provides, as already outlined during the proceedings, for the improved and more efficient way of providing the top to the crate.

Thus, it is clear that the Examiner has committed **clear errors in fact** by considering a single hole in a wall to be a lattice.

For at least these reasons given above, the Examiner has committed clear errors in fact. Applicant respectfully requests reconsideration and reversal of the rejection of Claims 12-14, 16, and 17.

In particular:

1. The Examiner has failed to establish a *prima facie* case of obviousness that Claims 12 and 14 are unpatentable over Heymann *et al* ("Heymann") US 4527707 in view of Sluiter (2002/0033392).

As will be appreciated, in light of both the decision by the United States Supreme Court in the case of *KSR International Co. v. Teleflex, Inc. et al.* (2007), and, the Memorandum to all Technology Center Directors from Deputy Commissioner for Patent Operations, Ms. Margaret A. Focarino (regarding interim "points" for obviousness determinations), the assessment of non-obviousness has been reaffirmed to rely on the Graham factors, with the test of "teaching, suggestion, or motivation" to combine the prior art to meet the claimed subject matter still providing a helpful insight in determining whether claimed subject matter is non-obvious under 35 U.S.C. §103(a).

The four factual inquiries under *Graham* include:

1. determining scope/contents of the prior art;
2. ascertaining differences between the prior art and claims at issue;
3. resolving level of ordinary skill in the pertinent art; and,
4. evaluating evidence of secondary considerations.

Importantly, the Court noted that the analysis supporting a rejection should be made "explicit" and that it was important to identify an "apparent reason" that would have "prompted" or motivated a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed (emphasis added).

Applicant contends that the arguments herein support a finding of non-obviousness of all claims, in keeping with the *Graham* factors. Specifically, the references fail to teach or suggest each and every feature recited in independent Claim 12. In addition, Applicant contends that the Examiner has not explicitly provided evidence of an apparent reason for combining the cited references in the manner claimed. Still further, Applicant contends that, even considering common knowledge at the time of the invention, that the disparity between the cited references would not have led a person with ordinary skill in the art to even remotely consider a combination of the cited references. Moreover, Applicant contends that, even if the references were combined in light of the ostensible common knowledge, a person with ordinary skill in the art could not have combined the references to arrive at the results of the claimed invention. Hence, the combination of references even in view of the common knowledge would not yield "predictable results" equivalent to Applicant's invention.

Additional limitations recited in independent Claim 12 or the dependent claims are not further discussed because the limitations discussed above are sufficient to distinguish the claimed invention from the cited art.

Specifically, none of the art of record teach or suggest that "the lateral walls of the crate are structured to define a lattice." As noted above, the Examiner has given an extraordinary meaning to such term, in contravention to the commonly attributed meaning, as well as the meaning given the term by Applicant.

From dictionary.com:

—noun

1. a structure of crossed wooden or metal strips usually arranged to form a diagonal pattern of open spaces between the strips.
2. a window, gate, or the like consisting of such a structure.
3. Physics . the structure of fissionable and nonfissionable materials geometrically arranged within a nuclear reactor.
4. Also called **Bravais lattice**, **crystal lattice**, **space lattice**. Crystallography . an arrangement in space of isolated points (lattice points) in a regular pattern, showing the positions of atoms, molecules, or ions in the structure of a crystal.
5. Mathematics . a partially ordered set in which every subset containing exactly two elements has a greatest lower bound or intersection and a least upper bound or union.

—verb (used with object)

6. to furnish with a lattice or latticework.

7. to form into or arrange like latticework.

Origin:

1350–1400; ME *latis* < MF *lattis*, deriv. of *latte* *lath* < Gmc; see *lath*

—Related forms

lat-tice-like, adjective

—Synonyms

1. *trellis*, *grille*, *screen*, *grid*.

Dictionary.com Unabridged

Based on the Random House Dictionary, © Random House, Inc. 2011.

Accordingly, Applicant teaches:

[0026] The lateral wall parts 11, 11a, 12, 12a of the transport container terminate in a straight line in the wall area opposing the bottom 13, as illustrated in FIG. 1a, or have a profile 21, as illustrated in FIGS. 2, 5, 5a, and 5b. The same applies for the bottom 13 of the transport container 20. In FIG. 1a the bottom 13 is embodied in a straight line, while FIGS. 2, 5, 5a, and 5b show a profile 22 on the underside of the bottom 13 of the transport container 20. As can be seen in FIGS. 1a, 2, 5, 5a, and 5b, the profile 31 of the top 30 conforms to the lateral wall parts 11, 11a, 12, 12a, and the bottom 13 of the transport container 20. Preferably the top 30 includes fastening means 32 that are produced from the material of the top 30 and that detachably engage with the preferably lattice-structured lateral wall parts

11, 11a, 12, 12a of the transport container 20 (FIGS. 2, 3a, 5, 5a, and 5b). A lattice structure of the external wall surfaces, which increases stability of the walls under pressure, is not illustrated in order that the drawings be clear and simple. The fastening means 32 can be produced from any other material than the top or the transport container. Preferably the transport container 20 or the top 30 has a counterpiece 23 to the fastening means 32 with which the fastening means 32 detachably engage. Particularly preferred, the fastening means 32 are attached to the top 30 and detachably engage with the lateral wall parts 11, 11a, 12, 12a or the bottom 13 of the transport container 20. In another embodiment (FIG. 3b), the fastening means are joined to the transport container 20 and detachably engage with the lateral wall parts 15, 15a, 16, 16a of the top 30.

[0027] FIG. 3a illustrates fastening means 32 that are attached to the top 30 and that detachably engage with the lateral wall surface of the transport container 20. In this exemplary embodiment, a hook-shaped fastening means is illustrated that detachably engages in the lattice structure of the wall surface of the transport container 20. The profile-conforming design of the top 30 as illustrated in FIG. 2, as well as the manner in which the top 30 detachably engages with the transport container 20 using fastening means 32, facilitates the advantageous stackability of the transport container systems 10.

None of the art teaches or suggests Applicant's claimed "lattice." As such, the

Examiner has failed to make a *prima facie* showing of obviousness.

2. The Examiner has failed to establish a *prima facie* case of obviousness that Claims 12-14, and 17 are unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392).

Applicant restates the foregoing observation that none of the art teaches or suggests Applicant's claimed "lattice." As such, the Examiner has failed to make a *prima facie* showing of obviousness.

3. The Examiner has failed to establish a *prima facie* case of obviousness that Claims 12-14, and 17 are unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and Heymann.

Applicant restates the foregoing observation that none of the art teaches or suggests Applicant's claimed "lattice." As such, the Examiner has failed to make a *prima facie* showing of obviousness.

4. The Examiner has failed to establish a *prima facie* case of obviousness that Claims 12, 14, and 16 are unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392).

Applicant restates the foregoing observation that none of the art teaches or suggests Applicant's claimed "lattice." As such, the Examiner has failed to make a *prima facie* showing of obviousness.

5. The Examiner has failed to establish a *prima facie* case of obviousness that Claim 17 is unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and further in view of Sterett (US 5361906).

Applicant restates the foregoing observation that none of the art teaches or suggests Applicant's claimed "lattice." As such, the Examiner has failed to make a *prima facie* showing of obviousness.

CONCLUSION

To establish a *prima facie* case of obviousness of a claimed invention, all the claimed features must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Because the cited art fails to teach or suggest a lattice as claimed by Applicant, the Examiner has failed to establish a *prima facie* case of obviousness.

As a result, Appellant respectfully submits that all rejections have been overcome and requests that the Board instruct the Examiner to pass the application to issuance.

Respectfully submitted,



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CLAIMS APPENDIX

- 1.-11. (canceled)
12. Transport container system, comprising:
a non-foldable or foldable crate,
the crate comprising a rectangular bottom and four rigid lateral wall adjoining the bottom and defining a rectangular opening in a plane parallel to the bottom,
a unitary top for augmenting height of the lateral walls of the crate and thereby providing a transport container of a increased volumetric capacity,
the top being constituted of a natural material and comprising four rigid lateral walls of sufficient strength to permit transport container stacking and defining a rectangular opening conforming to the rectangular opening of the crate, and
fasteners for attaching the top when unfolded, to the crate at the opening thereof so that the lateral walls of the top augment height of the lateral walls of the crate,
wherein the lateral walls of the crate are structured to define a lattice, and
wherein said fasteners are attached to the top and are releasably engageable with the lattice structured lateral walls of the crate.
13. Transport container system according to claim 12, wherein
the top has respective fold lines at corners thereof whereby the top is foldable into a compact configuration when not in use.
14. Transport container system according to claim 12, wherein
the top comprises wood or cardboard and is thereby suitable for disposal after single use.
15. (canceled)

16. Transport container system according to claim 12, further comprising corner stiffeners at corners of the top.

17. Transport container system according to claim 12, wherein said top can be folded up via fold lines in the corners,

on its side that faces the crate opening said top conforms in shape to the crate opening formed by said lateral walls of said crate, and

for stacking, at its side facing away from the crate opening and at its side facing the crate opening at least at the corner areas of said bottom said top is embodied with a profile that conforms a profile of said lateral wall parts of said crate and said bottom and that can be placed on the upper side of said lateral walls of said crate.

18. – 23. (Withdrawn)

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.